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Message Text

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62
ORIGIN TRSE-00

INFO OCT-01 EUR-25 ADP-00 L-03 EB-11 CU-04 COME-00 CIAE-00

INR-10 NSAE-00 RSC-01 USIA-12 /067 R

66610
DRAFTED BY: TRSY / OS: NGORDON
APPROVED BY: L: CNBROWER
TRSY/ OS: RDAVIES
TRSY/ OS: RPATRICK
EUR/ SES: STEFAN
EB/ CBA/ BP: WINTER
EB/ IFD/ OMA: MILAM
EUR/ SOV: COLBERT
EUR/ SOV: MATLOCK
EUR: ARMITAGE
L/ T: BEVANS
EB/ ITP/ EWT: TARTTER
CU: CORIDEN
L/ EUR: SMALL
---------- 039249
P 082304 Z JUN 73
FM SECSTATE WASHDC
TO AMEMBASSY MOSCOW PRIORITY

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E. O. 11652: GDS
TAGS: EFIN, UR
SUBJ: US- USSR TAX TREATY

REF: STATE 74121

PLEASE PROPOSE ASAP TO MR. MALKEVICH, CHIEF OF ADMINISTRATION, MINISTRY OF FOREIGN TRADE, WHO HEADED THE SOVIET DELEGATION IN NEGOTIATING TAX TREATY, TO CONSIDER FOLLOWING MODIFICATIONS IN DRAFT TEXT OF US- USSR TAX CONVENTION (COPY AIR POUCHED MAY 31). IF ACCEPTABLE, PLEASE CABLE USSR- APPROVED FORMULATION
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OF REVISED CLAUSES IN RUSSIAN LANGUAGE.

(1) IN ARTICLE III, SUBPARA. 1.(A), SECOND LINE: INSERT THE PHRASE ", OR RIGHT TO USE," AFTER THE WORDS " USE OF." THIS INSERTION COVERS THE CASE WHERE A LICENSING CONTRACT CALLS FOR THE PAYMENT OF A ROYALTY EVEN IF THE LICENSEE, HAVING THE RIGHT TO USE A PATENT, ETC., DOES NOT IN FACT USE IT. IT WOULD ALSO PROVIDE THE INTENDED ANTECEDENT FOR THE WORD " RIGHTS" IN FOLLOW ING SUBPARA. 1.(B).

(2) IN ARTICLE III, SUBPARA. 1. (E): REVISE THE SUBPARAGRAPH SO THAT IT READS AS FOLLOWS (NEW WORDS IN QUOTATION MARKS; WORDS REMOVED ARE IN SLASHES //):

"(E) " INCOME FROM" THE SALE OF GOODS OR THE SUPPLYING OF SER-VICES THROUGH A BROKER OR GENERAL COMMISSION AGENT /,/ OR / ANY/ OTHER AGENT / OF INDEPENDENT STATUS/, WHERE SUCH BROKER OR AGENT IS ACTING IN THE ORDINARY COURSE OF HIS BUSINESS /;/ " AND IS INDEPENDENT OF THE SELLER OR SUPPLIER AND OF THE CONTRACTING STATE OF WHICH THE SELLER OR SUPPLIER IS A RES-IDENT;"

THIS CHANGE IS DESIGNED TO OBVIATE DIFFICULTIES THAT MAY ARISE WHEN INTERNAL REVENUE SERVICE AUDITORS APPLY THE TREATY, BY INTRODUCING GREATER PRECISION. THE INTENT OF THE US NEGOTIATORS IS NOT CHANGED (ALTHOUGH US INTENT MAY NOT HAVE BEEN THE SAME AS THAT OF THE USSR). A FIRM IN THE US WHICH IS OWNED BY THE USSR AND ACTS AS AN AGENT ON BEHALF OF A SOVIET FOREIGN TRADE ENTERPRISE WOULD NOT BE CONSIDERED " INDEPENDENT ," SINCE THE SOVIET GOVERNMENT CONTROLS BOTH. ANY PRICING, COMPENSATION, OR OTHER ARRANGEMENTS BETWEEN THE AGENT AND ITS PRINCIPAL WOULD PROVOKE ISSUES AS TO WHETHER THE ARRANGMENTS ARE AT ARM' S LENGTH AND WHETHER INCOME THAT SHOULD BE TAXED TO THE AGENT IS BEING TRASNFERRED TO THE SOVIET ENTERPRISE WHICH WOULD NOT BE TAXED. THE REVISED LAN-GUAGE SPELLS OUT WHAT WE MEAN BY " INDEPENDENT" : THE AGENT MUST NOT ONLY BE INDEPENDENT OF THE SELLER BUT ALSO TRULY INDEPENDENT (NOT MERELY TECHNICALLY OR LEGALLY INDEPENDENT) OF THE GOVERNMENT OF THE USSR OR THE US. BOTH CONDITIONS MUST BE MET. THE CHANGE CLARIFIES THE UNDER STANDING THAT IF A SOVIET AGENCY WERE ESTABLISHED IN THE US TO SELL GOODS ON BEHALF OF

A SOVIET ENTERPRISE AND THE SOVIET ENTERPRISE ALSO MAINTANED AN OFFICE (REPRESENTATION) IN THE US, THE LATTER WOULD NOT BE EXEMPT FROM US TAX. (THE AGENCY WOULD IN EITHER CASE BE SUBJECT TO TAX.)

(3) IN ARTICLE IV, PARA. 1., LINE 1: THE PHRASE " FROM COMM-ERCIAL ACTIVITY" SHOULD BE INSERTED AFTER THE FIRST WORD

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(INCOME." THIS WOULD CLARIFY THE INTENT; INCOME FROM EMPLOY-
MENT MAY BE TAXABLE INSOME CIRCUMSTANCES, FOR EXAMPLE, EVEN
THOUGH THE RESIDENT RECEIVING IT DOES NOT HAVE A " REPRESEN-
TATION" AS DEFINED IN THE ARTICLE.

(4) ALSO IN ARTICLE IV, PARA. 1., LINE 3: " THEY ARE" SHOULD
BE REPLACED BY " IT IS." THE ANTECEDENT, INCOME, IS SINGULAR.

(5) IN ARTICLE VI, SUBPARA. 1. (B): REMOVE THE COMMA AFTER
" TECHNOLOGY." IN SUBPARA. 1.: C)(1) : REVERSE THE ORDER OF
RESEARCH AND EDUCATION SO THAT THE PHRASE READS " OR AN EDUCA-
TIONAL OR SCIENTIFIC RESEARCH INSTITUTION." IT WAS NOT INTENDED
THAT " SCIENTIFIC" SHOULD MODIFY " EDUCATIONAL." AS IT NOW
STANDS, IT IS AMBIGUOUS. THE SAME CHANGE SHOULD BE MADE IN
SUBPARA. 1.(D) OF ARTICLE VI.

(6) IN COURSE OF NEGOTIATIONS, US DELEGATION GAVE NOTICE
OF INTENTION TO PROPOSE MODIFICATIN OF ARTICLE X (NON-
DISCRIMINATION). OBJECT IS TO PROVIDE PROTECTION AGAINST
HEAVIER SOVIET TAXES ON AMERICAN FIRMS IN USSR THAN ON FRENCH,
U. K. , ETC., SIMPLY BECAUSE US TAXES, BEING HEAVIER THAN IN
THOSE COUNTRIES, CONSTITUTE A GR
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*** Current Classification *** LIMITED OFFICIAL USE

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Disposition Approved on Date:
Disposition Authority: morefirh
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Disposition Date: 28 MAY 2004
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Disposition History: n/a
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